

STATEMENT OF SENATOR BENJAMIN L. CARDIN (D-MD)  
IN OPPOSITION TO S. J. RES. 30,  
PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE NATIONAL  
MEDIATION BOARD RULE  
REGARDING REPRESENTATION ELECTION PROCEDURES  
September 23, 2010

I want to thank Senator Harkin for his leadership on this issue in opposing the Senate Joint Resolution 30. I join him in urging my colleagues to oppose the resolution. The National Mediation Board, or NMB, is an important entity and they have the responsibility to oversee labor management relations in the rail and aviation industries.

On May 11, 2010, the NMB issued a final rule that allows a majority of voting employees to determine the outcome of union representation elections. Now, I don't understand the controversy here. I thought that we all agreed that majority rules as far as what should happen. Doesn't this statement sound like something that we would take for granted in our democracy? Isn't this how elections work?

Prior to this new regulation, non-participating voters were counted as "no" voters and thus affected the outcome of union elections. That procedure undermined the will of the voting majority and incorrectly assigned presumptive voter intent. Imagine if we applied that logic to Congressional elections—you could run unopposed and win every vote cast. We don't know who doesn't vote or how they would vote. And to say that that's a negative defies the democratic system that we hold so dear in this country.

Opponents of this rule change argue that the Board does not have the authority to change the rule. The Railway Labor Act gives the NMB discretion on conducting union elections and procedure is not outlined in statute. U.S. Supreme Court and U.S. District Court decisions have confirmed that authority.

Opponents of the NMB rule also want to turn this issue into an argument about the Employee Free Choice, an issue that has some controversy among some of my members, but this rule is just not true. This deals with areas where we already have union representation.

I was proud to join 38 of my Senate colleagues in signing on to a letter in December 2009 encouraging the National Mediation Board to change its outdated union election procedures. And that's exactly what they have done.

The old procedure is not used in any other union elections. It does not follow the democratic norms for elections that all Americans value and respect. The old procedure really doesn't even make any sense. The NMB rule change was the right decision. To me this is a matter of just basic fairness. It is a matter of what the values of our nation are all about. Those who participate get a right to decide. You can't participate by not participating and that's what the rule makes clear – that we'll count the votes that are cast, but not the votes that are not cast. Thus, I must stand in strong opposition to S.J. Res. 30 and urge my colleagues to do the same.

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